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### MEMORANDUM

**TO:** Jersey City Council

**FROM:** Norma Garcia

**DATE:** November 28, 2018

**RE:** Prerogative Writs Litigation: *Maria Scariati v. Jersey City et al.*

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On October 24, 2018, Jersey City resident, Maria Scariati, ("Plaintiff") filed an Action in Lieu of Prerogative Writs (lawsuit) challenging the legality of *Jersey City Ordinance 18-057* ("Ordinance"). The Plaintiff also requested that the matter be heard in a summary manner.

Plaintiff's lawsuit alleged that the Ordinance was invalid as:

1. *Ordinance 18-057* was substantially altered between first and second readings. Specifically, the Ordinance changed how long the Katyn Memorial would be relocated, from "99 years" to "in perpetuity"; and
2. A non-City Council member, as required by *Jersey City Ordinance A350-24 (D)*, illegally introduced *Ordinance 18-057*.

At the time of the lawsuit filing, the City had introduced a repeal Ordinance for Ordinance 18-057 as the pressing issue was, and continues to be, the establishment of the Payroll Tax to fund the City's Schools.<sup>1</sup>

As such, the City advised the Court that it did not oppose the Prerogative Writ action, allowing the Court to nullify/invalidate the Ordinance *ab initio* (from the beginning, as though it never existed) and thus mooted the need to vote on the pending repeal ordinance and more importantly, mooted the Katyn referendum vote.

In nullifying the Ordinance, the Court was required to make a record setting forth the basis for the nullification and held Plaintiff's uncontested basis to be the reasons for the nullification.

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<sup>1</sup> It was determined that should the referendum vote be held for *Ordinance 18-057*, an anticipated referendum vote for the Payroll Tax could not be held until general elections in November, 2019.  
*N.J.S.A. 40:69A-193*

The Court's reasoning for the nullification was premised upon Plaintiff's uncontested allegations. However, it is likely neither of Plaintiff's two allegations for nullification would have survived opposition had the City been inclined to challenge the action.

First, the "substantial" alteration argument would have been a judgment call for the Court. The City would have argued that it was Corporation Counsel's position at the time of adoption that the difference between "99 years" and "in perpetuity" was a minor change that would not require additional notice.

The Courts have held that the standard for the republication of an Ordinance that has been changes between first and second reading is not any or every amendment to an ordinance; to the contrary, only a change that "substantially alters" the "substance" of an ordinance would require republication. Here, the difference between 99 years and in perpetuity is arguably not a substantial change to the substance of the Ordinance and did not require republication.

Secondly, the Plaintiff's position that the Ordinance was illegally introduced/signed by a non-City Council member pursuant to *Jersey City Ordinance A350-24(D)* is incorrect. Plaintiff's interpretation of *Jersey City Council Rule A350-24(D)* can only be maintained if considered in complete disregard, and to the exclusion of the remainder of *Section A350-24-Rule XXII: Ordinances; resolutions; motions; number of votes; emergency ordinance*.

*Sub-section (D)* provides:

*Introducing for passage or approval. Ordinances, resolutions or other matters requiring action by the Council shall only be introduced by a member of the Council. When a Council member introduces an ordinance or resolution, his or her name shall appear on the same.*

Sub-section (D), read in exclusion of the entirety of *Section: A350-24* could be mistakenly interpreted as Plaintiff chose to do. However, the reasonable and correct legal interpretation would require the reading of Sub-section (D) in conjunction with the remainder of the section. Specifically, Sub-section (C), which precedes (D) and in relevant part reads as follows:

*A350-24(C) Prior approval by administrative heads of departments. All ordinances and resolutions before presentation to the Council by the Mayor or Business Administrator shall have been reduced to writing. Every ordinance and resolution except those requested by members of the City Council shall bear the name and signature of the city official requesting it. . . .*

As such, a proper legal reading of the Rules of Council and *Ordinance 18-057* demonstrates that it was properly introduced by, and accordingly signed by, the Business Administrator.

The Court entered its Order on November 16, 2018 declaring *Jersey City Ordinance 18-057* null and void.